

before the conference, the regulatory authority may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the established date of the conference for the purpose of gathering information relevant to the conference.

(iv) The requirements of section 5 of the Administrative Procedure Act, as amended (5 U.S.C. 554), shall not apply to the conduct of the informal conference. The conference shall be conducted by a representative of the regulatory authority, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to subchapter J of this chapter.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conference held in accordances with this section may be used by the regulatory authority as the public hearing required under § 761.12(d) of this chapter on proposed relocation or closing of public roads.

(d) *Public availability of permit applications*—(1) *General availability.* Except as provided in paragraph (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the regulatory authority shall be available, at reasonable times, for public inspection and copying.

(2) *Limited availability.* Except as provided in paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this paragraph shall be made available to the public when such information is re-

quired to be on public file pursuant to State law.

(3) *Confidentiality.* The regulatory authority shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to—

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under section 508 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

(iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 U.S.C. 470).

[48 FR 44391, Sept. 28, 1983, as amended at 64 FR 70837, Dec. 17, 1999]

§ 773.15 Review of permit applications.

(a) *General.* (1) The regulatory authority shall review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application. If an informal conference is held under § 773.13(c), the decision shall be made within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that his application is in compliance with all the requirements of the regulatory program.

(b) *Review of violations.* (1) Based on a review of all reasonably available information concerning violation notices

involving either the applicant or any person owned or controlled by the applicant, including information obtained pursuant to §§ 773.22, 773.23, 778.13, and 778.14 of this chapter, the regulatory authority may not issue the permit if any surface coal mining and reclamation operation owned or controlled by the applicant is currently in violation of the Act, any Federal rule or regulation promulgated pursuant thereto, a State program, or any Federal or State law, rule, or regulation pertaining to air or water environmental protection. In the absence of a failure-to-abate cessation order, the regulatory authority may presume that a notice of violation issued pursuant to § 843.12 of this chapter or under a Federal or State program is being corrected to the satisfaction of the agency with jurisdiction over the violation where the abatement period for the notice of violation has not yet expired and where, as part of the violation information provided pursuant to § 778.14 of this chapter, the applicant has provided certification that the violation is in the process of being so corrected. This presumption does not apply where evidence to the contrary is set forth in the permit application, or where the notice of violation is issued for nonpayment of abandoned mine land reclamation fees or civil penalties. If a current violation exists, the regulatory authority must require the applicant or any person owned or controlled by the applicant, before the issuance of the permit, to either:

(i) Submit to the regulatory proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the regulatory authority that the applicant, or any person owned or controlled by the applicant, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under § 775.13 of this chapter affirms the violation, then the applicant must, within 30 days of the judicial action, submit the proof required under paragraph (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of a presumption supported by certification under § 778.14 of this chapter that a violation is in the process of being corrected, on the basis of proof submitted under paragraph (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in paragraph (b)(1)(ii) of this section, must be issued conditionally.

(3) If the regulatory authority makes a finding that the applicant, or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit may be issued. Before such a finding becomes final, the applicant or operator must be afforded an opportunity for an adjudicatory hearing on the determination as provided for in § 775.11 of this chapter.

(4)(i) Subsequent to October 24, 1992, the prohibitions of paragraph (b) of this section regarding the issuance of a new permit do not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a permit:

(1) Issued before September 30, 1994, or any renewals thereof; and

(2) Held by the person making application for the new permit.

(ii) For permits issued under § 785.25 of this chapter, an event or condition will be presumed to be unanticipated for the purposes of this paragraph if it:

(A) Arose after permit issuance;

(B) Was related to prior mining; and

(C) Was not identified in the permit.

(c) *Written findings for permit application approval.* No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the regulatory authority finds, in writing, on the basis of information set

forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and the regulatory program.

(2) The applicant has demonstrated that reclamation as required by the Act and the regulatory program can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is—

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to parts 764 and 769 of this chapter, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for surface coal mining operations under parts 762 and 764 or 769 of this chapter or within an area subject to the prohibitions of § 761.11 of this chapter.

(4) For mining operations where the private mineral estate to be mined has been severed from the private surface estate, the applicant has submitted to the regulatory authority the documentation required under § 778.15(b) of this chapter.

(5) The regulatory authority has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with § 701.11(d), and the applicable performance standards of subchapter B or K of this chapter.

(7) The applicant has paid all reclamation fees from previous and existing operations as required by subchapter R of this chapter.

(8) The applicant has satisfied the applicable requirements of part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of § 816.111(d) or § 817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(11) The regulatory authority has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the regulatory authority has determined that no additional protection measures are necessary.

(12) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of § 816.106 or § 817.106 of this chapter, the site of the operation is a *previously mined area* as defined in § 701.5 of this chapter.

(13) For permits to be issued under § 785.25 of this chapter, the permit application must contain:

(i) Lands eligible for remining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished.

(d) *Performance bond submittal.* If the regulatory authority decides to approve the application, it shall require that the applicant file the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of subchapter J of this chapter.

(e) *Final compliance review.* After an application is approved, but before the

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permit is issued, the regulatory authority must reconsider its decision to approve the application, based on the compliance review required by paragraph (b)(1) of this section in light of any new information submitted under §§ 778.13(k) and 778.14(d) of this chapter.

[48 FR 44391, Sept. 28, 1983, as amended at 52 FR 4262, Feb. 10, 1987; 52 FR 17529, May 8, 1987; 53 FR 38890, Oct. 3, 1988; 54 FR 8991, Mar. 2, 1989; 59 FR 54353, Oct. 28, 1994; 60 FR 58491, Nov. 27, 1995; 62 FR 19458, Apr. 21, 1997; 64 FR 70837, Dec. 17, 1999]

§ 773.17 Permit conditions.

Each permit issued by the regulatory authority shall be subject to the following conditions:

(a) The permittee shall conduct surface coal mining and reclamation operations only on those lands that are specifically designated as the permit area on the maps submitted with the application and authorized for the term of the permit and that are subject to the performance bond or other equivalent guarantee in effect pursuant to subchapter J of this chapter.

(b) The permittee shall conduct all surface coal mining and reclamation operations only as described in the approved application, except to the extent that the regulatory authority otherwise directs in the permit.

(c) The permittee shall comply with the terms and conditions of the permit, all applicable performance standards of the Act, and the requirements of the regulatory program.

(d) Without advance notice, delay, or a search warrant, upon presentation of appropriate credentials, the permittee shall allow the authorized representatives of the Secretary and the State regulatory authority to—

(1) Have the right of entry provided for in §§ 842.13 and 840.12 of this chapter; and

(2) Be accompanied by private persons for the purpose of conducting an inspection in accordance with parts 840 and 842, when the inspection is in response to an alleged violation reported to the regulatory authority by the private person.

(e) The permittee shall take all possible steps to minimize any adverse impact to the environment or public health and safety resulting from non-

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compliance with any term or condition or the permit, including, but not limited to—

(1) Any accelerated or additional monitoring necessary to determine the nature and extent of noncompliance and the results of the noncompliance;

(2) Immediate implementation of measures necessary to comply; and

(3) Warning, as soon as possible after learning of such noncompliance, any person whose health and safety is in imminent danger due to the noncompliance.

(f) As applicable, the permittee shall comply with § 701.11(d) and subchapter B or K of this chapter for compliance, modification, or abandonment of existing structures.

(g) The operator shall pay all reclamation fees required by subchapter R of this chapter for coal produced under the permit for sale, transfer or use, in the manner required by that subchapter.

(h) Within 30 days after a cessation order is issued under § 843.11 of this chapter, or the State program equivalent, for operations conducted under the permit, except where a stay of the cessation order is granted and remains in effect, the permittee must either submit to the regulatory authority the following information, current to the date the cessation order was issued, or notify the regulatory authority in writing that there has been no change since the immediately preceding submittal of such information:

(1) Any new information needed to correct or update the information previously submitted to the regulatory authority by the permittee under § 778.13(c) of this chapter; or

(2) If not previously submitted, the information required from a permit application by § 778.13(c) of this chapter.

[48 FR 44391, Sept. 28, 1983, as amended at 49 FR 27499, July 5, 1984; 54 FR 8991, Mar. 2, 1989; 62 FR 19459, Apr. 21, 1997]

§ 773.19 Permit issuance and right of renewal.

(a) *Decision.* If the application is approved, the permit shall be issued upon submittal of a performance bond in accordance with subchapter J. If the application is disapproved, specific reasons therefore shall be set forth in the